IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

C.R.No.150 of 2007

Date of Decision : 25.09.2007

Hardyal Singh .....Petitioner

versus

Jit Singh and others .....Respondents

CORAM : HON'BLE MR.JUSTICE HEMANT GUPTA

Present : Mr.A.K.Kalsi, Advocate for the petitioner.
Mr.G.S.Verma, Advocate for respondent Nos.1, 3 and 4.

-.-

JUDGMENT

HEMANT GUPTA, J. (Oral)

The present petition is directed against the order passed by the learned trial Court dated 9.11.2006 whereby an application for permission to lead additional evidence was declined.

The petitioner was defendant in the suit for declaration that the plaintiff-respondents are the owners in possession of land measuring 8 kanals 3 marlas and for declaring that the order of mutation is null and void. In the said suit, there was an ad-interim order dated 17.4.1998 that the parties shall maintain status quo. Subsequently, the said suit was withdrawn by the plaintiffs. The defendant-petitioner filed an application under Order 39 Rule 2-A of the Code of Civil Procedure alleging violation of ad-interim order passed by the Civil Court on 17.4.1998 in which the petitioner moved an application for permission to lead additional evidence so as to produce the exchange deed, report of the order of Naib Tehsildar, certified copy of the order dated 12.12.1995, mutation No.424 and the copy of the order dated 19.11.1999 alongwith some other revenue documents.

Since the suit in which an ad-interim order was passed, has been withdrawn, the learned counsel for the petitioner was directed to satisfy as to how the petition under Order 39 Rule 2-A of the Code of Civil Procedure is maintainable.

Learned counsel for the petitioner has relied upon "***Tayabbhai M.Bagasarwalla and another versus Hind Rubber Industries Pvt. Ltd etc. AIR 1997 Supreme Court-1240",*** to contend that the interim order passed by the Civil Court is required to be complied with by the parties. Since the status quo order has been violated by the respondents, therefore, the petitioner is entitled to seek compliance of the order in terms of Order 39 Rule 2-A of the Code of Civil Procedure.

The interim order of status quo stood merged with the final order of withdrawn of the suit. This Court in case ***"Darshan Singh versus Sadha Singh and others, 2002 (2) PLR-680"*** has held that the application under Order 39 Rule 2-A of the Code of Civil Procedure is not maintainable after the withdrawal of the suit. The judgment referred to by the learned counsel for the petitioner is clearly distinguishable and not applicable to the facts of the present case. In *Hind Rubber Industries' case (supra),* an application for punishment of the defendants under Order 39 Rule 2-A of the Code of Civil Procedure was filed on 11.4.1991 in respect of the ad interim injunction order passed by the Civil Court on 15.2.1991. Though the High Court on July 3, 1996 held that the jurisdiction of the Civil Court is barred, but it was found by the Hon'ble Supreme Court that the interim orders passed by the learned trial Court are required to be complied with by the defendants. It is, thus, apparent that the application under Order 39 Rule 2-A was filed when the suit was pending. It was only subsequently found

that the Civil Court was no jurisdiction. Thus, the facts in *Hind Rubber Industries' case (supra)* are materially different then in the present case where the application under Order 39 Rule 2-A of the Code of Civil Procedure has been filed after the suit was withdrawn. Since the suit was withdrawn, the remedy of the petitioner is not by virtue of an application under Order 39 Rule 2-A of the Code of Civil Procedure, but lies elsewhere.

In view of the above, I am of the opinion that the proceedings under Order 39 Rule 2-A of the Code of Civil Procedure after the withdrawal of the suit itself are not maintainable at the instance of the defendants and, thus, not only the application filed by the petitioner for permission to lead additional evidence, but the application under Order 39 Rule 2-A of the Code of Civil Procedure filed by the petitioner, itself is misconceived and consequently, the same is dismissed. The application filed by the petitioner for permission of seek additional evidence is not maintainable and the same is also dismissed.

The present revision petition stands dismissed accordingly.

25-09-2007 **(HEMANT GUPTA)**
*mohinder **JUDGE**